

**Revised Comments Judicial Elections** Many outstanding and knowledgeable national public figures, jurists, i.e., the late US Supreme Court Justices John Paul Stephens and Sandra Day O'Connor as well as concerned Maryland entities such as the Maryland State Bar Association (MSBA) have long been outspoken critics of the practice of electing judges. The outdated practice in many jurisdictions such as Maryland, where it now applies only to Circuit court, originated back in earlier times when a judicial prospect did not have to had attended law school and may only have had to have read law in an uncertified, catch-as-catch fashion in a lawyer's office to become a lawyer or even a judge. In those olden times, just being an outstanding citizen, whose character and leadership traits were well known in usually smaller population centers was often enough to get one elected a judge. In more recent times with thorough vetting by judicial nominating commissions, much of the justification for keeping Circuit Court judicial elections has been that minorities were not being selected or nominated and that elections allowed for minorities a path to become members of the judiciary or the threat of running a particular prospective candidate if not appointed, might influence a gubernatorial appointment decision. Since the late 1960's in Maryland a judicial nominating system has evolved producing many more minority qualified nominees with governors appointing many. So

that justification has greatly subsided, in my opinion, as more minorities have become judges in Maryland on all levels of the judiciary and there is some thought that the retention election approach may have backfired against minorities appointed judges in some jurisdiction.

By way of background, please note I write as a judge, who successfully participated in the Circuit court retention election process in 2005-2006; thus, have been actively presiding as a trial judge in Maryland for 33 years. I am in Senior status conducting trials and Alternative Dispute Resolutions on the District and Circuit courts literally all over the State of Maryland. I was twice specially assigned, when in full time status, to sit on a panel on the Court of Special Appeals; a court for which I still routinely co-mediate cases. In addition, I served as a member of a joint judicial-legislative committee studying Maryland judicial retention election process circa 2007 as well as an officer or member of community and bar associations at all levels.

The circuit court, particularly in jurisdictions with only one judge or only a limited number of judges, is an extremely challenging venue where major, complex litigation involving all areas of the law occurs routinely. Thus, it is crucial to get hard working lawyers and judges dedicated to public service who

are particularly learned and experienced in the law and actual court procedure to apply for seats for the Circuit court. I know firsthand from my long involvement with the legal profession at many levels and on-going contact with qualified lawyers and judicial colleagues, **the** major impediment from a qualified lawyer practitioner with a good practice viewpoint or a reputable District court judge to applying to the circuit court is the retention election

Besides the specter of subjecting yourself and even your family to much scrutiny, a qualified private practitioner with a good practice, probably making more than a circuit court judge ever will in salary, risks giving up that security and consistency of having such practice if he or she loses a retention election after appointment, after perhaps being away from the law practice for a period of up to two years. Or an experienced District court judge or a qualified public sector lawyer risks leaving perhaps in a tenured position with a governmental agency or the like, with a loss or decrease in seniority, salary, or pension benefits, etc. All of that can be a daunting prospect along with possibly having to raise money and drum up support, workers, to run in an election if opposed. It is a particularly daunting task and often a detriment to even applying for those not recently politically active, such as sitting District court judges who are ethically prohibited from

participating in politics. While I was never particularly politically active as a lawyer before my District Court appointment in 1989 and was prohibited from being so during my 16 years on District Court before running in a contested circuit court retention election in 2006, I had to come out of political exile to vigorously and actively participate in an election campaign for over a year with the stringent judicial ethical prohibitions against campaign promises, etc. imposed on and likely more enforceable against me as a sitting judge as opposed to that of a non-judicial candidate for election; all the while performing the new and challenging daytime responsibilities of a sitting circuit court judge. While the experiences of running in a political campaign were interesting and life expanding, I was forced to raise money through committees and contribute my own money as well as unknowingly ask for the vote of those members of the public, such as from one of whom I had ordered put **of** his house in a domestic violence case the year before or with whom I unknowingly might have pending cases. Circuit judges don't make that much more in salary than District Court judges, so putting in from District the only place where one can really get actual on-the-job experience for State Circuit judicial experience is often not a great incentive. I know we lose a great many very qualified and experienced potential applicants from District, private practice and public service

agencies who do not want to subject themselves or families to all those experiences, expenses or uncertainties noted. And we all too often lose sitting experienced very qualified circuit court judges just recently appointed who lose contested elections at times due to an uninformed or unknowing or confused electorate not familiar or sufficiently informed, amidst the hoopla of political campaigns, of all the professional experiences and background required to be a circuit court judge.

In closing based on my experiences and perspectives as a Maryland lawyer for almost 20 years and then a judge for 33 years, having been appointed to the bench by both a Democratic and Republican governor and having served on the MSBA judicial selection committee, I would urge this Committee to carefully scrutinize the present retention election requirement for Circuit court, find it an archaic vestige from olden colonial times now only applicable to one level of the four levels of our State judicial system and recommend abolishing it, as it is simply not needed in this day and age for all the reasons mentioned. A simple retention election process as the appellate judges or state senate approval process as the District Court judges go through would provide sufficient democratic checks and balances for the public in this day and age in Maryland as it does now for the other three levels of our court system. It would go a long way to encourage more

qualified and experienced lawyers and judges to apply and to retain qualified recently appointed circuit court judges, who don't have to function as rookie politicians on campaign while at the same time learning how to be a good circuit Court judge being relatively newly appointed on that court.

If I can be of further assistance to the committee, please do not hesitate to contact me.

Senior Judge Louis A. Becker, Retired from the Circuit and District Courts of Maryland for Howard County